

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**IN RE: DIGITEK PRODUCT LIABILITY  
LITIGATION**

**MDL NO. 1968**

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**THIS DOCUMENT RELATES TO ALL CASES**

**MYLAN DEFENDANTS' COMPANION MOTION FOR SUMMARY JUDGMENT  
AND TO EXCLUDE EXPERT TESTIMONY**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants Mylan Inc., Mylan Pharmaceuticals Inc., Mylan Bertek Pharmaceuticals Inc., and UDL Laboratories, Inc. (collectively, "Mylan Defendants") move for summary judgment on all remaining claims and causes of action pending against them in this MDL proceeding. This motion serves as a companion to Defendants' Motion for Summary Judgment, filed today on behalf of all defendants. Mylan Defendants incorporate by reference Defendants' Motion for Summary Judgment and its supporting memorandum, including all exhibits, factual statements, and authorities cited therein.

After three years of litigation, Plaintiffs have no admissible evidence that Digitek® tablets distributed by Mylan Defendants and allegedly consumed by Plaintiffs were defective. Because proof of defect is an essential element common to all Plaintiffs' claims and causes of action, Mylan Defendants are entitled to judgment as a matter of law in the remaining MDL cases.

Additionally, Mylan Defendants move, pursuant to Rule 702 of the Federal Rules of Evidence, for an order excluding the expert testimony of Mark Kenny, on the grounds that Mr.

Kenny, the only expert designated to offer opinion testimony against Mylan Defendants, lacks sufficient qualifications for his opinions, and they have no reliable basis in fact or methodology.

FOR THESE REASONS, Mylan Defendants respectfully ask this Court to enter an order granting summary judgment for Mylan Defendants on all remaining claims and causes of action asserted against them by Plaintiffs in this MDL proceeding. Mylan Defendants also ask this Court to enter an order excluding the proffered expert testimony of Mark Kenny, the only Plaintiffs' expert to offer opinions concerning Mylan Defendants.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 3, 2011, a copy of the foregoing MYLAN DEFENDANTS' COMPANION MOTION FOR SUMMARY JUDGMENT AND TO EXCLUDE EXPERT TESTIMONY was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Respectfully submitted,

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